

ORIGINAL

CSR - \_\_\_\_\_  
CG Docket No. 06-181

FILED/ACCEPTED

SFP 18 2012

Federal Communications Commission  
Office of the Secretary

## Background

TNT has 3 main initiatives, with the primary initiative being the production of the hourly, weekly television program, Club TNT. Club TNT is starting its 10<sup>th</sup> year

<sup>3</sup> CVAA Pub L No 111-260, §202(c)(2010), amending 47 U S C §613(d)

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creatively teaching young people, ages 10-18, through music, dance, poetry and “straight talk ” Some show content is also directed to younger children (through animated programs) and to adults Show producers encourage and stimulate the creative energy of show participants as they provide public service information. Club TNT confronts issues of gang involvement, smoking, alcohol and other drug abuse, teen pregnancy, adolescent suicide awareness and prevention and the negative impact of a life of crime

Videography, pre- and post-production, is done in house and is donated by the volunteer staff of Today Not Tomorrow A third party, Any & All Video, provides minimal post-production support. Today Not Tomorrow is supported primarily by individual donations, although a small percentage of our funding is through corporate sponsorships, grants and contract work, in the areas of videography and messaging.

Sponsorships and contracts related to Club TNT support

- the overhead of the organization, and equipment needs that arise.
- TNT’s *Youth Safety First Campaign*, which provides messaging and programming around the issues of “Locking up Alcohol, Guns, and Prescription Medications” and the prevention and reduction of bullying. Bullying programs are also grant supported.
- The *Project Babies* initiative, which works to strengthen families and the health and well-being of infants and toddlers, and reduce the infant mortality rate of Dane County Again, the programming of Project Babies are led and funded by volunteers

TNT produces the “Club TNT” program The 60-minute show airs 52 times per year Television Wisconsin, Inc , licensee of WISC-TV, wishes to broadcast the show on

its multicast channel but has requested that Club TNT be captioned in compliance with FCC rules

As described below, the costs to caption “Club TNT” are economically burdensome relative to the costs to produce the program and TNT’s sharply limited financial resources. TNT’s annual funding is \$100,000, and TNT has no paid staff. Donations and sponsorship, to date, have been insufficient to cover the captioning costs, resulting in financial hardship to an organization that is committed to using TV programming and other means to educate and inform the local community.

*Basis for Exemption under the CVAA*

Under the CVAA, petitioners may seek individual closed captioning exemptions under Section 713(d)(3) of the Act based on a showing that providing captions in the programming would be “economically burdensome,” a term that the CVAA defines based on the following criteria:

- (1) the nature and cost of the closed captions for the programming;
- (2) the impact on the operation of the provider or program owner;
- (3) the financial resources of the provider or program owner, and
- (4) the type of operations of the provider or program owner.

According to the Commission, a petitioner “must include up-to-date evidence, supported by affidavit (i.e., a written sworn statement made under oath), demonstrating that it would be economically burdensome to provide closed captioning on the specific programming for which an exemption is sought.”<sup>4</sup>

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<sup>4</sup> Public Notice, “Notice of Need to File Updated Information With Respect to Pending Petitions for Exemption from Commission’s Closed Captioning Rules Which Were Filed Prior to October 2010,” DA 12-514 (rel. April 2, 2012) (“Public Notice”).

Section 79.1(f) provides that a “video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements”<sup>5</sup>. In accordance with the four-step procedure outlined in the CFAA and supplemented by the Public Notice, TNT submits that even under this revised standard, an exemption is proper here.

### ***The Nature and Cost of the Closed Captions for the Programming***

With respect to factor one, the nature and cost of the closed captions, TNT submits the affidavit of Jeanne F. Erickson, Director of Operations, Outreach and Programming, at Attachment A. As set forth in the accompanying financial information at Attachment B, TNT is a noncommercial 501(c)(3) organization that must rely on outside captioning services to comply with the FCC’s requirements. TNT estimates that the cost to caption per hour is \$1,000 annually. Some third-party services have estimated the costs as much higher, at \$2,000 per week. This is a significant expense relative to the direct costs of producing the show, as described below. The show is unscripted, so the program must be played live in the studio for captioning to take place. TNT produces approximately 26-30 new shows per year, and “remixes” segments from earlier shows into new shows from time to time. In total, there are a substantial number of hours of programming that would have to be captioned.

### ***The Impact on the Provider’s Operations***

Regarding factor two, the impact on TNT’s operations, TNT demonstrates that the cost of captioning Club TNT is economically burdensome. TNT’s annual funding is \$100,000, and the organization has no paid staff. The statement at Attachment B shows TNT’s expenses and revenues for 2010, 2011 and 2012. In 2011, “Club TNT”

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<sup>5</sup> 47 C.F.R. § 79.1(f)(1)

was produced at a cost with no associated advertising revenue. If the cost to caption was factored in, the direct cost for the program would have exceeded the in revenues for TNT in all of 2011.

As the financial documentation in *Attachment B* sets forth, TNT has very limited financial resources. TNT does not itself have the means to provide captioning for the programming. TNT has sought closed captioning assistance from its video programming distributor and has sought additional sponsorship sources or services to provide captioning services or funding. These efforts have been unsuccessful. Requiring TNT to caption the program would have a devastating effect on TNT's ability to operate moving forward. In all likelihood, TNT would simply cease producing this worthy program that benefits the youth in the Madison area, in the absence of a waiver.

***The financial resources of the provider***

Under the third factor, the financial resources of program owner, TNT submits that it is a nonprofit 501(c)(3) corporation with less than in annual funding, as set forth in *Attachment B*. TNT is just barely cash-flow positive after payment of its operating expenses and depends heavily on donations and contributions to advance its mission. Simply put, TNT's financial resources are too limited to cover the significant expenses associated with captioning "Club TNT."

***The type of operations of the provider***

Under factor four, as described above, TNT is a 501(c)(3) charitable organization that depends on volunteer staffing, production and related services to produce Club TNT to fulfill TNT's broader mission. Accordingly, TNT must act prudently in making decisions about increasing production costs of local programming where, as here, such

costs would exceed its operating budget. If required to caption the program, TNT would cease production because to date TNT has been unable to get sponsors, donors or other parties to cover the captioning costs.

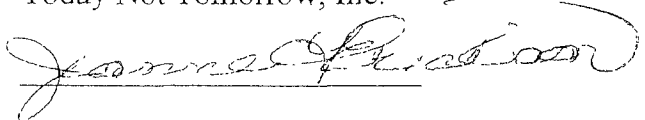
*Conclusion*

As demonstrated above, compliance with the captioning rule would be economically burdensome due to the high costs of captioning relative to the limited revenues generated by the program. For the foregoing reasons, TNT respectfully requests an exemption from the closed captioning requirement for the "Club TNT" program. Doing so would give TNT additional opportunities to obtain donations or other revenues to justify the costs of captioning while the program continues to be broadcast serving the public. Accordingly, TNT requests FCC approval to provide the program to the station for broadcast in the manner set forth above without the requirement to provide closed captions.

Respectfully submitted,

Today Not Tomorrow, Inc.

By



Jeanne F. Erickson  
Director of Operations,  
Outreach and Programming  
Today Not Tomorrow, Inc.  
1202 Williamson Street, Suite 109  
Madison, WI 53701

September 18, 2012

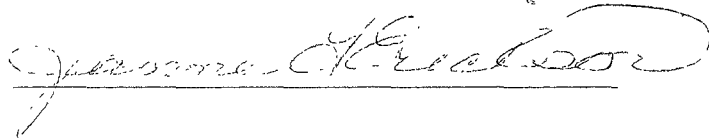
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ATTACHMENT A: AFFIDAVIT

I, Jeanne F Erickson, under oath, hereby state as follows.

- 1 I am the Director of Operations, Outreach and Programming for Today Not Tomorrow, Inc., a 501(c)(3) charitable organization that produces the TV program "Club TNT "
2. I hereby certify under penalty of perjury that the statements of fact contained in the attached "Petition for Exemption from Closed Captioning Requirements" are true and correct to the best of my knowledge, information and belief.

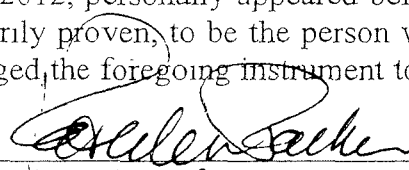
The affiant further says not.



STATE OF WISCONSIN

COUNTY OF Dane

On this 17<sup>th</sup> day of September, 2012, personally appeared before me, the above named Jeanne Erickson known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing instrument to be his free act and deed, before me.

  
Notary Public

Print Name KATHLEEN PARKER

My Commission expires 12/13/15

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**ATTACHMENT B: SUPPORTING FINANCIAL DOCUMENTATION**

**See attached.**



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